

Carolyn A. Taylor TBA #08526800/FIN 1290  
Dominique Varner TBA #00791182/FIN 18805  
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ATTORNEYS FOR FAIRBANKS CAPITAL CORP. as servicing agent for DLJ MORTGAGE CAPITAL, INC.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE:

GREGORY E. BINGHAM

§

Case No. 03-44675-MDL

§

SHENELL Y. BINGHAM

§

Chapter 13

§

DEBTORS

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FAIRBANKS CAPITAL CORP. as servicing  
agent for DLJ MORTGAGE CAPITAL, INC.  
Movant

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V.

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**A HEARING WILL BE HELD**

**FEBRUARY 6, 2004 AT 10:00 A.M.**

§

GREGORY E. BINGHAM and  
SHENELL Y. BINGHAM, Debtors and  
DANIEL E. O'CONNELL, Trustee,  
Respondents

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**MOTION OF FAIRBANKS CAPITAL CORP. as servicing agent for DLJ MORTGAGE  
CAPITAL, INC. FOR RELIEF FROM THE AUTOMATIC STAY OF AN ACT  
AGAINST PROPERTY OF 11 U.S.C. § 362**

**TO ALL CREDITORS AND PARTIES-IN-INTEREST:**

**RULE 4001 NOTICE:**

***NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN  
RESPONSE AND AFFIDAVIT WHICH COMPLY WITH LOCAL RULE 4001 ARE FILED  
WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED  
UPON THE UNDERSIGNED ATTORNEY OF RECORD, MS. CAROLYN A. TAYLOR OF  
HUGHES, WATTERS & ASKANASE, L.L.P., 1415 LOUISIANA, 37TH FLOOR, HOUSTON,***

***TEXAS 77002 ON OR BEFORE FIVE (5) BUSINESS DAYS PRIOR TO THE PRELIMINARY HEARING DATE SET BY THE COURT.***

***IF THE PLEADINGS ARE NOT TIMELY FILED, THE MOTION MAY BE DEEMED TO BE UNOPPOSED AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT.***

**TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:**

COMES NOW, FAIRBANKS CAPITAL CORP. as servicing agent for DLJ MORTGAGE CAPITAL, INC. ("Movant"), a secured creditor herein, and files this its Motion for Relief From the Automatic Stay of an Act Against Property of 11 U.S.C. § 362 as follows:

**I.  
Jurisdiction and Parties**

1. GREGORY E. BINGHAM and SHENELL Y. BINGHAM, the Debtors herein ("Debtors"), commenced the above captioned Chapter 13 case on OCTOBER 14, 2003. DANIEL E. O'CONNELL is the duly appointed and acting Chapter 13 Trustee.

2. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157, 11 U.S.C. § 362, and other applicable Code provisions.

**II.  
Request for Relief From the Automatic Stay of  
an Act Against Property of 11 U.S.C. § 362**

3. On or about MAY 12, 2000, for value received, Debtors executed that certain Adjustable Rate Note (the "Note") in the original principal sum of \$78,880.00, bearing interest at the initial rate of 11.99% per annum and being payable as therein set out to the order of AMERICAN CAPITAL FUNDING CORPORATION. A true and correct copy of the Note is attached hereto marked Exhibit "A."

4. The Note is secured by that certain Deed of Trust (the "Deed of Trust") of even date

therewith, which Deed of Trust was filed for record in the Official Public Records of Real Property of HARRIS County, Texas, creating a valid, first and prior lien on improved real property in HARRIS County, Texas, being further described as follows

LOT 20, BLOCK 9 OF GREENBRIAR COLONY TOWNHOUSES, A SUBDIVISION IN HARRIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 295, PAGE 79 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS AND MORE COMMONLY KNOWN AS 15609 AIKEN LANE, HOUSTON, TEXAS 77032

("Property"). A true and correct copy of which Deed of Trust is attached hereto marked as Exhibit "B."

5. Movant is the legal and equitable owner and holder of the Note and the lien securing the payment of same.

6. At the time the bankruptcy petition was filed, the Note was due for the AUGUST 2002 THROUGH OCTOBER 2003 installments. The total pre-petition arrearage was \$13,365.07. The total payoff on the Note was \$91,503.96.

7. Debtors defaulted under the terms of the Note by failing to make the payments due thereunder. Movant would show that since the filing of Debtors' bankruptcy petition, the installments due in NOVEMBER 2003 and subsequent installments have not been made.

8. Movant would show the Court that Debtors have no equity in the Property and that the Property is not necessary or essential to the Debtors' reorganization.

9. Movant would further show the Court that the Debtors have neglected to provide Movant with adequate protection with respect to the Property; alternatively, Movant requests adequate protection.

10. Movant further requests that the automatic stay of 11 U.S.C. § 362 be terminated

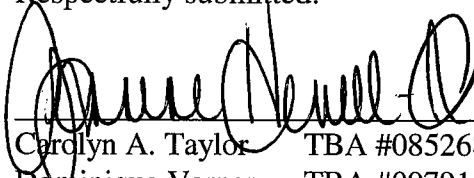
“for cause” to allow Movant to exercise its rights under the loan documents and applicable law to repossess and/or foreclose its liens on the Property based upon the Debtors’ failure to make the payments due under the Note.

11. Movant further requests that the provisions of Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure be waived to enable Movant, its successors and assigns, to immediately enforce and implement the terms of the proposed order granting relief from automatic stay.

WHEREFORE, PREMISES CONSIDERED, Movant prays for the following relief:

1. That the Court terminate the automatic stay of 11 U.S.C. § 362 to allow Movant to exercise its rights under the loan documents and applicable law to repossess and/or foreclose its liens on the Property because the Debtors lack equity in the Property; alternatively because the Property is not necessary or essential to the Debtors’ reorganization.
2. That the automatic stay of 11 U.S.C. § 362 be terminated to allow Movant to exercise its rights under the loan documents and applicable law to repossess and/or foreclose its liens on the Property based upon the Debtors’ failure and inability to furnish Movant with adequate protection with regard to the Property.
3. Alternatively, that this Court order that the Debtors furnish Movant with adequate protection with regard to the Property.
4. Alternatively, that the automatic stay of 11 U.S.C. § 362 be terminated “for cause” to allow Movant to exercise its rights under the loan documents and applicable law to repossess and/or foreclose its liens on the Property as to the Property for the reasons set out above.
5. That the provisions of Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure be waived to enable Movant, its successors and assigns, to immediately enforce and implement the terms of the proposed order granting relief from automatic stay.
6. For all such other and further relief, general and special, legal and equitable, to which Movant may show itself justly entitled.

Respectfully submitted:



Cardlyn A. Taylor TBA #08526800/FIN 1290

Dominique Varner TBA #00791182/FIN 18805

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Brendetta A. Scott TBA #24012219/FIN 24592

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ATTORNEY FOR FAIRBANKS CAPITAL CORP.  
as servicing agent for DLJ MORTGAGE CAPITAL,  
INC.

Of Counsel:

HUGHES, WATTERS & ASKANASE, L.L.P.

1415 Louisiana, 37th Floor

Houston, Texas 77002

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**CERTIFICATE OF SERVICE**

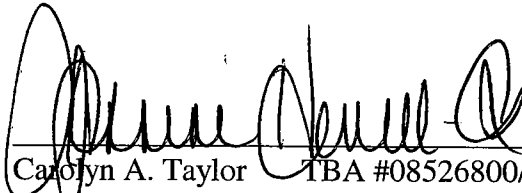
The undersigned hereby certifies that a true and correct copy of the above foregoing Motion of FAIRBANKS CAPITAL CORP. as servicing agent for DLJ MORTGAGE CAPITAL, INC. for Relief from the Automatic Stay of an Act Against Property of 11 U.S.C. § 362 has been served upon the following parties by first class mail, postage prepaid, or by electronic mail on this 8th day of January, 2004.

DEBTORS  
GREGORY E. BINGHAM  
SHENELL Y. BINGHAM  
7321 ROHBELL  
HOUSTON TX 77016

DEBTORS' ATTORNEY  
CHRISTOPHER T. MORRISON  
2100 W. LOOP S. STE 900  
HOUSTON TX 77027

TRUSTEE  
DANIEL E. O'CONNELL  
P.O. BOX 13  
LAPORTE TX 77572-0013

PARTIES REQUESTING NOTICE:  
NONE

  
\_\_\_\_\_  
Carolyn A. Taylor TBA #08526800/FIN 1290  
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**A HEARING WILL BE HELD**

**FEBRUARY 6, 2004 AT 10:00 A.M.**

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GREGORY E. BINGHAM and  
SHENELL Y. BINGHAM, Debtors and  
DANIEL E. O'CONNELL, Trustee,  
Respondents

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**ORDER TERMINATING THE AUTOMATIC STAY OF  
AN ACT AGAINST PROPERTY OF 11 U.S.C. § 362**

In HOUSTON, Texas in said District, came on for hearing the Motion of FAIRBANKS CAPITAL CORP. as servicing agent for DLJ MORTGAGE CAPITAL, INC., for Relief from the Automatic Stay of Act Against Property owned by GREGORY E. BINGHAM and SHENELL Y. BINGHAM, and it appearing that due notice of said Motion having been properly given, that no

answer or request for hearing thereon having been filed with the Court and that the automatic stay of 11 U.S.C. § 362 should be terminated as requested. It is therefore,

ORDERED that the automatic stay of 11 U.S.C. § 362 be, and same is hereby, terminated with respect to FAIRBANKS CAPITAL CORP. as servicing agent for DLJ MORTGAGE CAPITAL, INC., its successors and assigns, and that certain real property more particularly described as follows:

LOT 20, BLOCK 9 OF GREENBRIAR COLONY TOWNHOUSES, A SUBDIVISION IN HARRIS COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN VOLUME 295, PAGE 79 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS AND MORE COMMONLY KNOWN AS 15609 AIKEN LANE, HOUSTON, TEXAS 77032

("Property") to enable FAIRBANKS CAPITAL CORP. as servicing agent for DLJ MORTGAGE CAPITAL, INC., its successors and assigns, to exercise any and all remedies available at law and under the applicable loan documents to repossess and/or foreclose its liens upon said real property.

ORDERED that the provisions of Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure are hereby waived and Movant, its successors and assigns, may immediately enforce and implement the terms of this order granting relief from the automatic stay.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2003.

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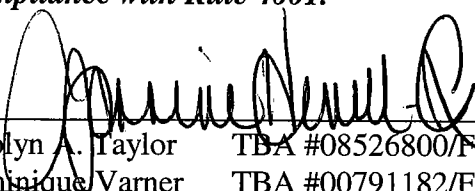
UNITED STATES BANKRUPTCY JUDGE PRESIDING



APPROVED:

***The undersigned counsel of record  
certifies compliance with Rule 4001.***

By: \_\_\_\_\_

  
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**UNOPPOSED ORDER LIFTING STAY**

Came on for consideration FAIRBANKS CAPITAL CORP. AS SERVICING AGENT  
FOR DLJ MORTGAGE CAPITAL, INC. ("Movant") unopposed motion for relief from the  
automatic stay. Movant's attorney represented that, after proper notice and timely service of the  
motion, there is no opposition to the motion.

It is ordered that the stay of 11 U.S.C. § 362 is lifted for the purpose of allowing Movant to exercise its rights with respect to the subject real described as:

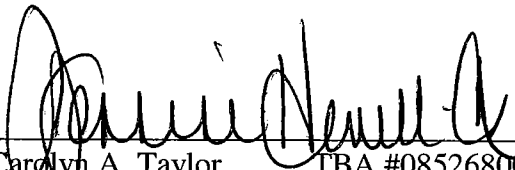
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Signed this the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
MANUEL D. LEAL  
UNITED STATES BANKRUPTCY JUDGE

APPROVED AS TO FORM & SUBSTANCE:

*The undersigned counsel of record certifies compliance with Rule 4001.*

By:  \_\_\_\_\_

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